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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,871	03/24/2004	David E. Simmen	STL919990184US3	5489

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EXAMINER

NGUYEN, CINDY

ART UNIT	PAPER NUMBER
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2161

DATE MAILED: 07/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/807,871

Applicant(s)

SIMMEN, DAVID E.

Examiner

Cindy Nguyen

Art Unit

2161

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04/04/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This is in response to communication filed 04/04/06.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

Claims 1-33 are provisionally rejected on the ground of nonstatutory double patenting over claims 1, 3-30 of copending Application No. 09/669556. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: using statistics on one or more expressions of one or more pre-defined queries to determine an optimal query execution plan for the query, generating cardinality estimates for one or more query execution plans for the query using statistics of one or more automatic summary tables that vertically overlap the query and using the generated cardinality estimates to determine an optimal query execution plan for the query.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other

copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The claimed invention is directed to non-statutory subject matter. Claims 1, 12 and 23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In the present case, the claimed invention does not fulfill any of the disclosed utilities as in specification, the claimed of the invention were not operated to produce a useful, concrete and tangible result that required for 35 U.S.C. 101, no practical application for abstract idea for optimizing execution of a query, it does not impart functionality to the computer, it's only present as abstract idea . Therefore, no useful, concrete or tangible result is produced

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-6, 12, 14-17, 23, 25-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Osborn et al. (US 6026391).

Regarding claims 1, 12 and 23, Osborn discloses: a method, an apparatus, an article of manufacture for optimizing execution of a query that accesses data stored on a data store connected to a computer comprising: using statistics on one or more expressions of one or more pre-defined queries to determine an optimal query execution plan for the query (col. 6, lines 38-50, col. 7, lines 7-35, Osborn).

Regarding claims 3, 14 and 25, all the limitations of these claims have been noted in the rejection of claims 1, 12 and 23 above, respectively. In addition, Osborn discloses: further comprising: generating cardinality estimates for one or more query execution plans for the query using the statistics of one or more of the pre-defined queries that vertically overlap the query (col. 6, lines 24-50, Osborn); and using the generated cardinality estimates to determine an optimal query execution plan for the query (col. 7, lines 7-35, Osborn).

Regarding claims 4, 15 and 26, all the limitations of these claims have been noted in the rejection of claims 3, 14 and 25 above, respectively. In addition, Osborn discloses: wherein the statistics are used to improve a combined selectivity estimate of one or more predicates of the query (col. 6, lines 24-50, Osborn).

Regarding claims 5, 16 and 27, all the limitations of these claims have been noted in the rejection of claims 4, 15 and 26 above, respectively. In addition, Osborn discloses: wherein the predicates are applied by one or more of the pre-defined queries (col. 6, lines 24-50, Osborn).

Regarding claims 6, 17 and 28, all the limitations of these claims have been noted in the rejection of claims 5, 16 and 27 above, respectively. In addition, Osborn discloses: wherein the selectivity estimate comprises a ratio of a cardinality of the pre-defined query to a product of cardinalities of base tables referenced in the pre- defined query and the query (col. 6, lines 24-50, Osborn).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 7-11, 13, 18-22, 24 and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn et al. (US 6029391) (Osborn) in view of Bello et al. (US 6496819) (Bello).

Regarding claims 2, 13 and 24, all the limitations of these claims have been noted in the rejection of claims 1, 12 and 23 above, respectively. However, Osborn didn't disclose: wherein each of the pre-defined queries is associated with an automatic summary table, materialized view or a view. On the other hand, Bello discloses: wherein each of the pre-defined queries is associated with an automatic summary table, materialized view or a view (col. 10, lines 8-45, Bello). Thus, at the time invention was made, it would have been obvious to a person of ordinary skill in the art to include wherein each of the pre-defined queries is associated with an

automatic summary table, materialized view or a view in the system of Osborn as taught by Bello. The motivation being to enable the system provide the materialized view to be used in rewrite of received query to reduce the execution cost of the query.

Regarding claims 7, 18 and 29, all the limitations of these claims have been noted in the rejection of claims 4, 15 and 26 above, respectively. In addition, Osborn/Bello discloses: wherein zero or more predicates of the query are applied by one of the pre-defined queries and wherein the remaining predicates are eligible to be applied on the pre-defined query (col. 10, lines 20-45, Bello).

Regarding claims 8, 19 and 30, all the limitations of these claims have been noted in the rejection of claims 7, 18 and 29 above, respectively. In addition, Osborn/Bello discloses: wherein a predicate is eligible to be applied on the pre-defined query if it can be evaluated using the output columns and expressions of the pre-defined query (col. 11, lines 30-55, Bello).

Regarding claims 9, 20 and 31, all the limitations of these claims have been noted in the rejection of claims 8, 19 and 30 above, respectively. In addition, Osborn/Bello discloses: further comprising determining a subpredicate combined selectivity estimate of the unapplied eligible predicates using column distribution statistics of the pre-defined query (col. 10, lines 30-36, Bello).

Regarding claims 10, 21 and 32, all the limitations of these claims have been noted in the rejection of claims 9, 20 and 31 above, respectively. In addition, Osborn/Bello discloses: wherein a cardinality ratio comprises a ratio of a cardinality of the pre-defined query to a product of cardinalities of base tables referenced in the pre-defined query and the query (col. 10, lines 37-56, Bello).

Regarding claims 11, 22 and 33, all the limitations of these claims have been noted in the rejection of claims 10, 21 and 32 above, respectively. In addition, Osborn/Bello discloses: wherein the selectivity estimate comprises a product of the subpredicate combined selectivity estimate and the cardinality ratio (col. 11, lines 55 to col. 12, lines 41, Bello).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cindy Nguyen whose telephone number is 571-272-4025. The examiner can normally be reached on M-F: 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gaffin Jeffrey can be reached on 571-272-4160. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



Cindy Nguyen
June 28, 2006



FRANTZ COBY
PRIMARY EXAMINER